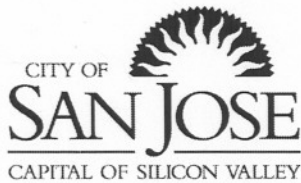


COUNCIL AGENDA: 04-19-05
ITEM: 43



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: April 8, 2005

Approved

Date

4/11/05

COUNCIL DISTRICT: Citywide

**SUBJECT: PROPOSED REVISIONS TO THE CITY COUNCIL POLICY ON
POST-CONSTRUCTION URBAN RUNOFF MANAGEMENT**

RECOMMENDATION

Adoption of a resolution approving a revised Council Policy on Post-Construction Urban Runoff Management (Policy No. 6-29) to:

1. Require the installation of stormwater treatment control measures in new and redevelopment projects which create, replace or add 10,000 square feet or more of impervious surface and involve "Land Uses of Concern," or require a permit or other direct approval from the Regional Water Quality Control Board (RWQCB);
2. Expand the Policy definition of "Land Uses of Concern" to include projects involving vehicle or equipment maintenance areas, including washing and repair, outdoor handling or storage of waste or hazardous materials, outdoor manufacturing area(s), outdoor food handling or processing, outdoor animal care, and outdoor horticultural activities where potential pollutant loading cannot be satisfactorily mitigated through other post-construction source control best management practices; and
3. Make a technical correction to the "Urban Core" definition related to the required proximity to a BART Area Node.

April 8, 2005

Subject: Proposed Revisions to the City Council Policy on Post-Construction Urban Runoff Management

Page 2

EXECUTIVE SUMMARY

Under the provisions of the Federal Clean Water Act, the San Francisco Bay Area Regional Water Quality Control Board (RWQCB) has jurisdiction over urban runoff pollution prevention programs for nine Bay Area counties including jurisdictions in the Santa Clara basin. The RWQCB issues an NPDES stormwater discharge permit (Permit) for 15 Co-permittees, including the City of San Jose, within the Santa Clara basin. Together these 15 Co-permittees constitute the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP).

The Post-Construction Urban Runoff Management Policy (Policy) is the City's primary document for implementing the provisions of the Permit. As required by the Permit, the Policy currently establishes criteria for requiring the installation of stormwater treatment controls, such as detention/retention structures, infiltration basins, and vegetated swales in relatively large (one acre or more of impervious surface) new development and redevelopment projects. The Policy must now address Group 2 as required by the Permit. The Permit requires the Co-permittees to begin implementation of Group 2 by April 15, 2005. The Co-permittees are proposing to begin implementation of Group 2 for "Land Uses of Concern" as defined in the Policy.

Planning staff, in collaboration with other City departments and the Redevelopment Agency, is proposing to revise the Policy to address Permit requirements pertaining to small to medium sized projects. The revised Policy would: (1) redefine the projects that are required to install hydraulically sized Post-Construction Treatment Control Measures (TCMs) to include new development and redevelopment projects that create, replace or add 10,000 square feet or more of impervious surface and involve "Land Uses of Concern," or require a permit or other direct approval from the RWQCB; and (2) expand the definition of "Land Uses of Concern" to include projects involving vehicle or equipment maintenance areas, including washing and repair, outdoor handling or storage of waste or hazardous materials, outdoor manufacturing area(s), outdoor food handling or processing, outdoor animal care, and outdoor horticultural activities, where potential pollutant loading cannot be satisfactorily mitigated through other post-construction source control best management practices.

In terms of outreach, Planning staff presented the revised Policy to the development community at the March 25, 2005 Developers Roundtable meeting. In addition, the revised Policy and public hearing notice have been e-mailed to developers, environmental groups, government agencies, and other stakeholders.

In a related matter associated with another section of the Permit, on April 19, 2005, Council will consider a proposal for implementing control measures on private and public development projects to protect local streams and creeks from the erosion that results from development-related increases in storm water flow velocities and durations (agenda item 4.4). These control measures would be incorporated into a Hydromodification Management Plan (HMP). The proposed Policy revision (as described in this memorandum) would address *pollutant* control standards for small projects, whereas the HMP sets much more ambitious standards for mitigating *flow*, particularly from relatively large projects (as described in the memorandum for

item 4.4). The HMP recommendation would affect future Policy changes, which would likely be brought forward within six months.

BACKGROUND

The City Council first adopted a Post-Construction Urban Runoff Management Policy in February 1998 to establish a framework for reducing stormwater pollution from new development through post-construction best management practices and stormwater treatment control measures. In October 2003, and on February 15, 2005, the City Council adopted revisions to the Policy to address new requirements in the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the City. Staff is now proposing another revision to the Policy to address additional requirements in the NPDES Permit.

The RWQCB issues NPDES permits that stipulate water quality requirements for dischargers to the San Francisco Bay and its tributaries. The RWQCB issues an NPDES Municipal Separate Storm Sewer System Permit to the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP), consisting of the City of San Jose and 14 other local jurisdictions ("Co-permittees"). The other Co-permittees include the County of Santa Clara, 12 other municipalities in the county, and the Santa Clara Valley Water District. These Co-permittees are also referred to as the Dischargers. Together the 15 Co-permittees constitute SCVURPPP.

In October 2001, the RWQCB issued a revised NPDES Permit (Order No. 01-119) (the Permit) establishing new requirements for hydraulic sizing (also called numeric sizing) of stormwater treatment control measures and best management practices for new development on vacant sites and redevelopment on sites that had been previously developed. Hydraulically sized stormwater treatment controls measures are engineered in proportion to the amount of impervious surface created or replaced on a project site and are designed to treat pollutants for a specified volume of storm water. The revised Permit required the Co-permittees to begin implementation of hydraulic sizing for larger projects, "Group 1 Projects," in October 2003, and for small to medium sized projects, "Group 2 Projects," in April 2005. The proposed revisions to the Policy are intended to address the Group 2 requirements in the Permit.

In October 2003, the RWQCB approved an alternative to the Group 2 project definition by increasing the size threshold from 5,000 square feet to 10,000 square feet, which more closely conforms to the provisions of the other Bay Area counties' stormwater programs' permits, except in one very important respect: the "begin implementation" date for Group 2 projects in the SCVURPPP Permit remains April 15, 2005, although implementation of Group 2 for the other Bay Area programs is not required to begin until 16 months later, on August 15, 2006.

Consistency with Other Bay Area Programs

In February 2003, NPDES permits for other countywide stormwater programs in the Bay Area region were amended to require hydraulic sizing of treatment measures, but the other counties

April 8, 2005

Subject: Proposed Revisions to the City Council Policy on Post-Construction Urban Runoff Management

Page 4

are not required to begin implementation of hydraulic sizing until February 15, 2005 for Group 1 Projects and August 15, 2006 for Group 2 Projects.

In addition to having different dates for implementation of hydraulic sizing, the permits for jurisdictions outside the Santa Clara basin also contained explicit exemptions for some projects that are not in the Permit for SCVURPPP, such as a limited single-family home exemption, and an exemption for certain road repair and reconstruction projects. Further, the size threshold for "Group 2" in other countywide permits is 10,000 square feet, while the size threshold stated in the Permit for SCVURPPP was 5,000 square feet. The other countywide permits also contain a clear definition of the type of "transit-oriented" projects that may be exempted from the sizing requirements.

Through the SCVURPPP Management Committee, an approach has been developed for implementing the Group 2 requirements of the Permit in a manner that will allow for eventual alignment of Santa Clara Valley implementation with that of other Bay Area counties. Consistent with the SCVURPPP approach, the proposed revised Policy would redefine what constitutes a "Major Project" and require that Major Projects involving Land Uses of Concern, as defined by the Policy, install Post-Construction Treatment Control Measures (TCMs) meeting the hydraulic sizing criteria set forth in the Permit except where it is impracticable to do so and Alternative Measures are provided. This requirement is the key feature in all of the Bay Area counties' storm water permits issued by the RWQCB. Consideration of expanding Group 2 to other land uses would be deferred until the other countywide programs begin Group 2 implementation, on August 15, 2006 (see attachment).

ANALYSIS

Summary

Planning staff, in collaboration with SCVURPPP, other City departments, and the Redevelopment Agency, proposes revising the existing Policy to conform to the Permit, while maintaining maximum consistency with implementation of the new requirements under permits issued to other Bay Area counties.

The proposed revised Policy would require new and redevelopment projects that create or replace 10,000 square feet or more of impervious surface and involving specified "Land Uses of Concern" as defined in the Policy to install Post-Construction Treatment Control Measures (TCMs) meeting the hydraulic sizing criteria set forth in the Permit.

Currently and consistent with all of the countywide permits, the revised Policy defines "Major Project" to include: (1) new development projects that create one acre (43,560 square feet) or more of impervious surface area; (2) new streets, roads, highways and freeways (specifically, any newly constructed paved surface used primarily for the transportation of automobiles and other motorized vehicles) built under the City's jurisdiction that create one acre (43,560 square feet) or more of impervious surface area; and (3) Significant Redevelopment Projects.

April 8, 2005

Subject: Proposed Revisions to the City Council Policy on Post-Construction Urban Runoff Management

Page 5

Single-family homes that are not part of a larger common plan of development and certain road repair and reconstruction projects are explicitly exempt from the hydraulic sizing requirement. The proposed revised Policy would require new and redevelopment projects of 10,000 square feet or more of impervious surface and involving all "Land Uses of Concern" as defined in the Policy to install Post-Construction Treatment Control Measures (TCMs) meeting the hydraulic sizing criteria set forth in the Permit.

Although City staff and other SCVURPPP Co-permittees have advised the RWQCB that they would prefer deferral of all the Group 2 requirements until August 15, 2006 to match the other permits in the region, SCVURPPP members have also expressed a willingness to begin early implementation of hydraulic sizing for a subset of Group 2 projects.

The subset of Group 2 projects that has been selected for the next phase of hydraulic sizing consists of the projects with the greatest potential to adversely impact water quality, either through direct discharge or proximity to local streams and creeks (projects that require a permit or other direct approval from the RWQCB), or through the discharge of polluted stormwater runoff (Land Uses of Concern). Since 1998, San Jose's Post-Construction Urban Runoff Management Policy has recognized the opportunity for improving water quality through requiring the implementation of post-construction best management practices for Land Uses of Concern.

Purpose

The purpose the Policy revision is to begin implementation of the "Group 2" requirements in the SCVURPPP NPDES Permit.

Definitions

The key changes to the Policy are revising the following definitions: (1) Land Uses of Concern, (2) Major Project, and (3) Significant Redevelopment Project. Additionally, staff proposes a minor revision to the Urban Core definition to be consistent with the General Plan's definition of a BART Area Node. The proposed definition changes are detailed below, with the underlined text indicating additions to the Policy and strike-out text indicating deletions.

Land Uses of Concern: Uses that have the greatest potential to contribute high levels of pollutant loading from Pollutants of Concern, including, but not limited to: gas stations; auto wrecking yards; loading docks; heavy automotive uses; vehicle or equipment maintenance areas, including washing and repair, outdoor handling or storage of waste or hazardous materials, outdoor manufacturing area(s), outdoor food handling or processing; outdoor animal care; outdoor horticultural activities, and various other heavy industrial and commercial uses where potential pollutant loading cannot be satisfactorily mitigated through other post-construction source control best management practices.

Major Project: New development projects that create one acre (43,560 square feet) or more of Impervious Surface Area; new streets, roads, highways and freeways built under the City's

jurisdiction that create one acre (43,560 square feet) or more of Impervious Surface Area; Significant Redevelopment Projects; and new development projects which create more than 10,000 square feet or more of Impervious Surface Area and involve a Land Use of Concern, or require a permit or other direct approval from the RWQCB (including projects requiring RWQCB certification under Section 401 of the Clean Water Act.)

Significant Redevelopment Projects: A project on a previously developed site that results in addition and/or replacement of one acre (43,560 square feet) or more of Impervious Surface Area; or, if involving a Land Use of Concern, addition and/or replacement of 10,000 square feet or more of Impervious Surface Area. Interior remodel, routine maintenance or repair, and exterior surface replacement or repaving are expressly excluded from this definition. Also excluded from this category are pavement resurfacing, repaving and road pavement structural section rehabilitation within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed.

Urban Core: Project (1) located within 1/4 mile of an existing or planned light rail, bus, BART, heavy rail or intermodal station (not including simple bus stops that are not stations), terminal, major transfer point, or having a project-dedicated van or bus shuttle service station; (2) in an area designated on the San Jose General Plan Land Use/Transportation Diagram for Transit Corridor Residential (20+ DU/AC), Residential Support for the Core (25+ DU/AC), Downtown Core Area, Downtown Frame Area, Neighborhood Business District, Transit-Oriented Development Corridor, or BART Area Node; or (3) on sites less than or equal to five acres, in areas designated by the City Council for density intensification such as sites subject to the update to the North San Jose Area Development Policy and involving commercial or industrial redevelopment that will increase the floor area ratio from less than 1 to greater than 1.

OUTCOMES

The proposed revised Policy has been structured to address the new requirements in the NPDES Permit and proposes implementation of Group 2 to be consistent with the timing in other permits issued by the RWQCB to other Bay Area counties' stormwater programs. The Council's action would result in the Policy being effective immediately.

COST IMPLICATIONS

The costs of implementing the unfunded, State mandated NPDES requirements associated with the proposed Policy Update involve increased development application processing times in order to review and analyze the stormwater implications of the development proposals. For FY05/06, one-time budget proposals are in preparation to add staff resources for this review in order to meet application processing goals. Empirical data will be collected to determine the costs of this review, and such costs are expected to be reflected in development fee increases for FY06/07 in order to satisfy the NPDES Permit requirements, meet the City's processing time goals, and achieve cost recovery.

April 8, 2005

Subject: Proposed Revisions to the City Council Policy on Post-Construction Urban Runoff Management

Page 7

The Policy would require the addition of stormwater treatment mechanisms to the City's public projects, likely resulting in cost implications for those projects. Due to the site-specific nature of treatment options and the fact that SCVURPPP is the first stormwater program in the Bay Area to implement the requirements of the C.3 Provision, it is difficult to generalize an estimate of the costs to City projects.

The Policy, however, does have a provision to address situations where the cost of compliance would be so high that its implementation would be impracticable. Specifically, when the projected cost of the required measure (cost of labor and materials for the treatment measure) exceeds two percent (2%) of the Total Project Costs (includes the construction, labor, and materials cost of the physical improvements proposed; but does not include land, transaction, financing, permitting, demolition, or off-site mitigation costs), then projects may provide an Alternative Measure, as defined in the Policy, in lieu of demonstrating compliance with the numeric sizing standard. This option applies to both public and private projects.

PUBLIC OUTREACH

Planning staff sent a hearing notice for the proposed Policy by e-mail to developers, consultants, engineers, representatives of environmental groups, and other stakeholder groups. Additional outreach consisted of posting the availability of the hearing notice on the Planning Divisions' web page and emailing the web page address to Bay Area representatives of stakeholder groups.

Planning staff has also prepared informational fact sheets on the proposed Policy revisions. These fact sheets were distributed at the Planning Divisions' Developers Roundtable meeting on March 25, 2005.

A copy of the Revised Policy was sent to the RWQCB on March 28, 2005.

COORDINATION

The proposed revised Policy was coordinated with the Environmental Services Department, the Department of Public Works, the Redevelopment Agency, and the City Attorney's Office.

CEQA

This project was found to be Exempt under the provisions of the California Environmental Quality Act (CEQA) under file No PP 05-012.



STEPHEN M. HAASE, DIRECTOR
Planning, Building and Code Enforcement

Attachment:

March 18, letter from SCVURPPP to Regional Water Quality Control Board



**Santa Clara Valley
Urban Runoff
Pollution Prevention Program**

Campbell • Cupertino • Los Altos • Los Altos Hills • Los Gatos • Milpitas • Monte Sereno • Mountain View • Palo Alto
San Jose • Santa Clara • Saratoga • Sunnyvale • Santa Clara County • Santa Clara Valley Water District

March 18, 2005

Mr. Bruce Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

**Re: Santa Clara Valley Urban Runoff Program NPDES Permit No. CAS029718
Request for Regional Board Approval of an Alternative "Group 2 Project"
Definition**

Dear Mr. Wolfe:

I am writing on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program ("SCVURPPP" or "Program")¹ to request that the Regional Board approve, as soon as possible, an alternative Group 2 Project definition pursuant to Provision C.3.c.iii of NPDES Permit No. CAS029718 ("Santa Clara Basin permit").²

As you know, the description of projects subject to Provision C.3 of the Santa Clara Basin permit originally differed from the description of covered projects in the C.3 provisions of the Alameda, Contra Costa, and San Mateo county-wide stormwater permits. In October 2003, however, the Regional Board approved an "alternative Group 2 project definition" which effectively conformed the C.3.c provision contained in the Santa Clara Basin permit to the other counties' permits *except* in one very important respect – the date for beginning implementation of C.3 requirements for "Group 2" projects is April 15, 2005 for SCVURPPP members while implementation as to "Group 2" is not required for another 16 months – until August 15, 2006 – in Alameda, Contra Costa, and San Mateo counties.

¹ The SCVURPPP is composed of 13 cities and towns in the Santa Clara Valley, the County of Santa Clara, and the Santa Clara Valley Water District; each SCVURPPP member is an independent co-permittee under the Santa Clara Basin permit.

² The submission of this request does not represent a waiver or release of any claims or rights that the cities of Milpitas and San Jose may have as a result of their legal challenge to the C.3 Provision.

To address the inherent disparity created by these differing implementation dates and "level the playing field,"³ SCVURPPP is proposing another alternative Group 2 project definition at this time – one which will require SCVURPPP member municipalities to begin the process of adopting guidance, policies, and ordinances to make the C.3 requirements applicable to "Tier 2A Projects" effective as of July 1, 2005.⁴ Tier 2A Projects will consist of new and redevelopment projects of 10,000 square feet or more of impervious surface in the following land use categories:

1. Gas stations or equipment fueling facilities or expansion of such uses;
2. Auto wrecking yards or expansion of such uses;
3. Loading dock areas (greater than 10,000 square feet) or expansion of such uses;
4. Other "Land Uses of Concern" which generate amounts of heavy pollutants equivalent to the above uses, including expansion of such uses. These will be projects with the following uses if the reviewing local agency finds that pollution potential for such uses cannot be satisfactorily mitigated through requirements for source control BMPs:
 - a. vehicle or equipment maintenance areas, including washing and repair
 - b. outdoor handling or storage of wastes or hazardous materials
 - c. outdoor manufacturing areas
 - d. outdoor food handling or processing
 - e. outdoor animal care; or
 - f. outdoor horticultural activities

Under this proposed alternative Group 2 project definition, application of the C.3 requirements for other Group/Tier 2 projects having from 10,000 square feet to one acre of impervious surface (i.e., "Tier 2B Projects") will otherwise not be phased in until August 15, 2006 (subject to adoption of the new Regional Group Permit or such further alternative Group 2 project definitions SCVURPPP submits for Regional Board approval, as is currently authorized).

* * * * *

³ The disparity in Group 2 implementation dates in different permits has previously been justified based on a comparison of the number of months SCVURPPP's members were given from the time the C.3 requirements were originally put into their permit with the number of months Alameda, Contra Costa, and San Mateo permittees were given from the time the C.3 requirements were put into their permit. However, a comparison of the internal "gearing up" time accorded prior to implementation of C.3 requirements for Group 2 projects does not fully address the real world effects on real estate development decisions and related economic and fiscal impacts of having C.3 requirements attach to Group 2 projects 16 months earlier in some parts of the Bay Area than in others.

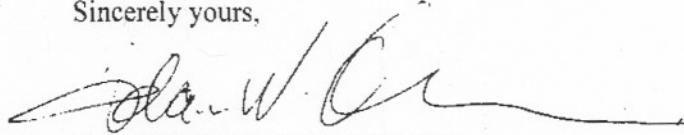
⁴ Water Board staff had considered amending the SCVURPPP permit provisions C.3.c. and C.3.g., and on December 22, 2004, provided a draft Tentative Order to the SCVURPPP Co-permittees which included an extension of the Group 2 implementation date to August 15, 2006. This caused many Co-permittees to halt efforts to amend guidance, ordinances, and policies to require Group 2 implementation by April 15, 2005. While its members would prefer the deferral of all Group/Tier 2 requirements until August 15, 2006, the SCVURPPP is willing to commit to having its members implement the Tier 2A alternative project definition as of July 1, 2005. The period between April 15 and July 1, 2005 should be sufficient to allow Co-permittees to make necessary adjustments in their guidance, policies and/or ordinances governing the local project approval process and it will allow the onset of implementation to coincide with the beginning of the fiscal year for the purpose of resource allocation.

Mr. Bruce Wolfe
March 18, 2005
Page 3 of 3

Because of the severe strain on Program member resources in the current fiscal environment, the Program is requesting action as soon as possible, preferably in advance of the current April 15, 2005 date for commencing Group 2 implementation in the Santa Clara Valley. Therefore, we would appreciate it if you or your staff could contact us to discuss how to bring this request before the Regional Water Board for approval at the earliest possible time (i.e., possibly as a consent item on the Board's agenda).

Thank you for your consideration, and please contact me with your questions and concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Adam W. Olivieri', with a long horizontal flourish extending to the right.

Adam W. Olivieri, Dr. P.H., P.E.
SCVURPPP Program Manager

cc: Shin Roci Lee, Regional Water Board
SCVURPPP Management Committee
SCVURPPP Permit Ad Hoc Steering Group